

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4370 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MAHEDAVIYA TATINA SOCIETY

Versus

K B CHIKALIA

Appearance:

MR SHAKIL S SHAIKH for Petitioner
MR JD AJMERA for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR BD DESAI, AGP for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/04/2000

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioner school management has challenged the judgment and order dated 29.2.1988 passed by the Gujarat Secondary Education Tribunal in application No. 199/85. The petitioner school

management had passed an order of termination on 15.4.1985 terminating the services of respondent No. 1. That order came to be challenged by respondent No. 1 before the Tribunal which passed the following operative order :-

"In the result, the application is partly allowed. No orders are passed regarding the payment of salaries w.e.f. 15.9.1981 to 15.4.1985. The impugned order of termination dated 15.4.1985 is quashed and set aside. The opp. School is directed to reinstate the applicant with full backwages from 15.4.1985."

It is the aforesaid judgment and order of the Tribunal which is under challenge in this petition.

2. By this time, respondent No.1 has already retired from service on reaching the age of superannuation. The dispute, therefore, revolves around the direction of the Tribunal to pay respondent No. 1 backwages for the period from 15.4.1985 (when the termination order was passed) till reinstatement.

3. At the hearing of the petition, the learned counsel for the petitioner management has submitted that the Tribunal has erred in interfering with the orders of termination and that in any view of the matter even if the order of reinstatement was justified, there was no justification for directing the management to pay respondent No. 1 full backwages from 15.4.1985. It is submitted that the Tribunal has quashed the order of termination on the grounds of violation of principles of natural justice such as non supply of the Inquiry Officer's report to the delinquent and not holding a fresh inquiry although in the previous applications the Tribunal had quashed the order of termination passed earlier. It is submitted that respondent No. 1 was guilty of the charges of unsatisfactory teaching work, indiscipline, irresponsible behaviour, misconduct, insolvent behaviour and behaviour inciting communalism and that in this set of circumstances, the petitioner management was justified in terminating the services of respondent No. 1 and that if for any reason the termination was found to be illegal on any technical ground, the Tribunal ought not to have awarded full backwages from 15.4.1985.

4. On the other hand, Mr JD Ajmera, learned counsel appearing for respondent No. 1 teacher has submitted that when the order of termination was held to be illegal, the

Tribunal was fully justified in directing the management to pay respondent No. 1 full backwages from the date of termination. It is submitted that otherwise also the petitioner was not awarded any backwages for the period from 15.9.1981 to 15.4.1985 on a technical ground.

5. Having heard the learned counsel for the parties, it appears to the Court that since there is no cross petition challenging the judgment and order of the Tribunal not awarding backwages for the period between 15.9.1981 to 15.4.1985, that issue need not detain the Court in these proceedings. As regards the order for backwages for the period from 15.4.1985 till the date of reinstatement, having regard to the peculiar facts and circumstances of the case and more particularly in view of the fact that on 14.11.1984 respondent No. 1 himself had stated that he did not wish to add anything further to what he had stated at the inquiry held on 11.10.1983 and that he did not wish to lead any further evidence or to examine any witnesses and that he had already submitted his explanation in presence of his representative, the Tribunal ought to have taken into account these relevant facts. Moreover, it is true that when the Tribunal delivered its judgment, the law as enunciated by this Court in the case of Union of India vs. N.N. Prajapati, 1985 (2) GLR 1406 was that non supply of the Inquiry Officer's report would vitiate the inquiry and the penalty. Subsequently the Apex Court pronounced the law that non supply of Inquiry Officer's report would vitiate the inquiry and penalty only in cases which were decided before the date of judgment in the case of Union of India vs. Mohd. Ramzan Khan, AIR 1991 SC 471 i.e. prior to 20.11.1990. That is the law laid down by the Apex Court in the case of Managing Director, ECIL, Hyderabad vs. B. Karunakar, AIR 1994 SC 1074.

6. In the aforesaid set of circumstances and the peculiar facts of the case, it appears to the Court that interests of justice would be served if the direction for awarding full backwages from 15.4.1985 till reinstatement is modified and substituted by the following direction :-

"The petitioner management shall pay respondent No. 1 fifty per cent (50%) of the backwages from 15.4.1985 till the date of reinstatement within four months from today".

7. It is clarified that upon setting aside the termination order dated 15.4.1985, respondent No. 1 was

in continues service and that this order only pertains to the quantum of backwages and it shall not come in the way of fixation of salary, pension and retirement benefits of respondent No. 1 depending on the pay revisions which took place from time to time.

8. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent only.

April 28, 2000 (M.S. Shah, J.)
sundar/-